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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,
Plaintiff and Respondent,

v.

MAXANNE TAMI,
Defendant and Appellant.

A099263

(Napa County
Super. Ct. No. CR 108183)

Defendant was convicted following a trial by the court of filing a false or forged marriage license in a public office in violation of Penal Code section 115. She argues on appeal that her marriage to a state prison inmate who was present by telephone was valid, so the marriage license was not false or forged in violation of Penal Code section 115. We conclude that the evidence fails to prove defendant knowingly filed any false or forged document as required to prove a violation of the statute, and reverse the judgment.

STATEMENT OF FACTS

On October 15, 2001, defendant and William Linsley personally participated as bride and groom in a marriage ceremony performed before witnesses at a residence in Napa by Karl “Speedy” Bishoff, a parolee and minister of the Universal Life Church who was legally authorized to conduct the nuptials.¹ Bishoff declined to obtain a license for the marriage at the Napa County Recorder’s Office, however, for fear of arrest pursuant an outstanding warrant. He referred defendant to David Miles, another Universal Life

¹ Defendant’s testimony is contained in a statement of stipulated facts agreed upon by the prosecutor and defense counsel, and filed with the court. The facts of this case are not in significant dispute. For the sake of clarity and convenience, we will refer to defendant Maxanne Tami as defendant, and William Linsley as Linsley.

Church minister who was also “legally authorized to perform marriages.” Defendant was apparently aware that this marriage was not lawful absent any filing of the license by Bishoff.

Defendant appeared at the Napa County Recorder’s Office on December 28, 2001, to obtain a marriage license. She mentioned to “legal clerk” Karen Burzdak that her prospective husband Linsley was “not available,” as he was then incarcerated in county jail, but “they were getting married the following day.” Burzdak provided defendant with an affidavit of inability to appear and a worksheet for a confidential marriage license that required the signatures of the bride, the incarcerated groom, and the officiant of the ceremony. Burzdak also discussed the completion of the forms with defendant, and advised her that the officiant needed to accompany her to the office to file the confidential license.

Defendant returned with her officiant David Miles to the Napa County Recorder’s Office on January 7, 2002. She presented the completed marriage license worksheet and affidavit, signed by herself, Linsley, and Miles. Defendant had signed the affidavit as “Maxanne Linsley,” and was instructed by the clerk “that she had to use her maiden name since they weren’t married yet.” She told the clerk she “had already been married on October 15, 2001,” and “this was just a formality.” The clerk reprinted the certificate and instructed defendant to “sign her maiden name first.” In response to defendant’s statement that “she was going to do the ceremony over the telephone,” the clerk informed her that “she could not do the ceremony over the phone and that all the parties to the marriage had to be present at the same place and time” together.

Defendant was erroneously given a certificate of marriage for a “public license” by the clerk, whereas a “confidential license” was appropriate for the circumstances. The recorder’s office contacted defendant later that day and advised her to return to the office to obtain a confidential license. Defendant received the certificate of marriage from the recorder’s office that day.

Miles and defendant then proceeded from the recorder’s office to a residence in Napa, where the marriage ceremony occurred on January 7, 2002. Miles performed the

ceremony with Linsley present “via the telephone” from San Quentin State Prison.² Defendant and witnesses were present at the residence with Miles. With Linsley’s authorization, defendant signed his name to the marriage license by tracing his signature from other papers. The witnesses also signed the license.

Defendant returned the completed marriage license to the recorder’s office by mail, where it was received on January 17, 2002. Defendant subsequently told a friend that she and Linsley “had been married, and they were going on their honeymoon.” She asked her friend to “check the mail,” as she was expecting the marriage license to be returned to her. Defendant professed to an investigator that she was not told and “had no knowledge” about “the legality of a marriage by proxy or by telephone.”

DISCUSSION

Defendant claims that the evidence failed to prove her marriage license was “false” within the meaning of Penal Code section 115, which provides in subdivision (a): “Every person who *knowingly* procures or offers any *false or forged instrument* to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.” (Italics added.) At trial, the prosecution argued that defendant knew a marriage ceremony must be performed “in the presence of all parties” rather than by telephone, and nevertheless falsely submitted the marriage certificate to the county recorder to be lawfully registered in violation of Penal Code section 115. Defendant’s position is that a “proxy marriage” performed with one party “represented by an agent” or present by telephone rather than “physically present at the ceremony” is valid in California, or at least “voidable only at the behest of one of the parties to the marriage.” Therefore, she maintains that the element of a “false” document essential to proof of a violation of Penal Code section 115 was not established by the evidence. Defendant further argues that she did not have the requisite “criminal intent” of knowledge of the illegality of the marriage.

² Miles was acquainted with Linsley.

“In addressing a challenge to the sufficiency of the evidence supporting a conviction, the reviewing court must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) “In that regard, we give great deference to the trial court and resolve all inferences and intendments in favor of the judgment. Similarly, all conflicting evidence will be resolved in favor of the decision.” (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849, fns. omitted.) “In evaluating the sufficiency of evidence, ‘the relevant question on appeal is not whether *we* are convinced beyond a reasonable doubt’ [citation], but ‘whether “ ‘any rational trier of fact’ ” could have been so persuaded’ [citation].” (*People v. Hernandez* (2003) 30 Cal.4th 835, 861.)

Penal Code section 115, “punishes offering a false instrument for filing.” (*People v. Tate* (1997) 55 Cal.App.4th 663, 664; see also *People v. Gangemi* (1993) 13 Cal.App.4th 1790, 1795.) “ ‘The core purpose of Penal Code section 115 is to protect the integrity and reliability of public records.’ [Citations.] This purpose is served by an interpretation that prohibits any knowing falsification of public records.” (*People v. Feinberg* (1997) 51 Cal.App.4th 1566, 1579.) “The crime is complete when the [instrument] has been prepared so that ‘upon its face it will have the effect of defrauding one who acts upon it as genuine.’ [Citation.] It is not necessary to constitute a completed offense that anyone actually be defrauded.” (*Generes v. Justice Court* (1980) 106 Cal.App.3d 678, 682.)

According to Family Code, section 300,³ a marriage is valid if based upon the consent of the parties to the marriage contract, “followed by the issuance of a license and solemnization as authorized by this division, except as provided by Section 425 and Part

³ All further statutory references are to the Family Code unless otherwise indicated.

4 (commencing with Section 500).” “In California, a lawful marriage requires the consent of a man and a woman to a personal relationship arising out of a civil contract. However, consent alone does not constitute marriage. A license must be issued and the marriage must be solemnized in accordance with the applicable statutes. (Fam. Code, § 300.)” (*Welch v. State of California* (2000) 83 Cal.App.4th 1374, 1378.) “According to the statutory scheme, there are five steps in the marriage process. First, the parties must consent. Second, the parties must obtain a license from the county clerk. Since the license and certificate of registry are combined into one form, the parties also obtain the certificate of registry at that time. Third, the marriage must be solemnized. Before solemnizing the marriage, the person conducting the ceremony must ensure that the parties have obtained a marriage license. Fourth, the person solemnizing the marriage must authenticate the marriage by signing the certificate of registry and arranging for at least one witness to sign the certificate. Finally, the person solemnizing the marriage must return the certificate of registry to the county clerk for filing.” (*Estate of DePasse* (2002) 97 Cal.App.4th 92, 101.)

Section 420 specifies in subdivision (a): “No particular form for the ceremony of marriage is required for solemnization of the marriage, but the parties shall declare, *in the presence* of the person solemnizing the marriage and necessary witnesses, that they take each other as husband and wife.” (Italics added.) “Unless a solemnization is performed as authorized under the code and performed by one mentioned in [Civil Code, former] section 70, there can be no valid marriage [citation].” (*Estate of Abate* (1958) 166 Cal.App.2d 282, 292.)

Defendant submits that the “in the presence” requirement of section 420 did not demand the “physical presence” of Linsley at the ceremony to satisfy the solemnization provisions of the statute, and his consent “through a telephonic medium” furnished his presence as necessary to legitimize the marriage. Since we conclude that the evidence fails to prove defendant “knowingly” filed a false or forged instrument, we find it unnecessary and inappropriate based on the sparse record before us to decide if marriages without the physical presence of one of the parties at the ceremony are valid.

“The crime of violating section 115 of the Penal Code is sufficiently proven when it is shown that the accused intentionally committed the forbidden act.” (*People v. Geibel* (1949) 93 Cal.App.2d 147, 168-169.) “The required mental state is ‘knowingly.’ ” (*People v. Gutierrez* (1997) 52 Cal.App.4th 380, 385.) “To act ‘knowingly’ means only that the actor must know of the existence of the facts which constitute the offense. Thus, ‘[k]nowledge does not refer to the defendant’s awareness that what he or she does is culpable or criminal in nature. Knowledge refers to awareness of the particular facts proscribed in criminal statutes.’ [Citation.]” (*People v. Honig* (1996) 48 Cal.App.4th 289, 336-337; see also *People v. Ramsey* (2000) 79 Cal.App.4th 621, 632.) “ ‘ ‘A requirement of knowledge is not a requirement that the act be done with any specific intent. . . . The word ‘knowing’ as used in a criminal statute imports only an awareness of the facts which bring the proscribed act within the terms of the statute. [Citation.]’ ” [Citations.]” (*People v. McDaniel* (1994) 22 Cal.App.4th 278, 285; see also *People v. Hawkins* (2002) 98 Cal.App.4th 1428, 1438-1439; *In re Ramon A.* (1995) 40 Cal.App.4th 935, 938; *People v. Horowitz* (1945) 70 Cal.App.2d 675, 702.)

For purposes of Penal Code section 115, a defendant “who does not know” that he or she has offered a false document to be filed has not committed a violation of the statute. (See *People v. Rubalcava* (2000) 23 Cal.4th 322, 332; *People v. Taylor* (2001) 93 Cal.App.4th 933, 941; *People v. Gaitan* (2001) 92 Cal.App.4th 540, 547.) The statute does not sanction a defendant who acts “recklessly;” the defendant must act with actual knowledge of the false or forged nature of the instrument filed. (See *People v. Stanistreet* (2002) 29 Cal.4th 497, 506; *People v. Garcia* (2001) 25 Cal.4th 744, 752-753.) Thus, the evidence must prove that defendant knew the existence of facts that established the invalidity of the certificate of registry and marriage license due to the presence of Linsley at the ceremony by telephone rather than in person, and made a false statement in one of those documents. She need not also know that if she filed a false marriage license she thereby violated Penal Code, section 115.

The dearth of legal authority construing the “in the presence” element of the solemnization provisions of section 420 was insufficient to inform the defendant that the

marriage ceremony was unlawful. In *Barrons v. United States* (9th Cir. 1951) 191 F.2d 92, the court considered the validity of a proxy marriage that had taken place in Nevada. At the time of the marriage the parties were under military orders and one was stationed in California and the other in Africa. In civilian life one party had resided in California and the other in Texas. The court found that there was no difference between California and Texas law for the purposes of determining if the marriage in Nevada was valid. The court observed that the “marriage relationship validly created by a proxy ceremony is in no way different from the same relationship created in the more usual manner,” and furthered the statutory objectives of the formal solemnization requirements to insure “publicity and certainty.” (*Id.*, at pp. 95, 96, fn. omitted.) The “remote possibilities” of fraud and lack of consent were considered “not sufficiently substantial” to render proxy marriages, which in some cases may be the only way in which a desirable legal and social status can be achieved, “at variance with the Nevada marriage laws.” (*Id.*, at p. 97, fn. omitted; see also *State of Oregon v. Anderson* (1964) 239 Or. 200, 206-207, 396 P.2d 558.)

In *Bustamante v. Haet* (1963) 222 Cal.App.2d 413, 416-417, a legal malpractice action was brought against an attorney for advising the plaintiff to enter into a proxy marriage that was later declared to be invalid. Although the legality of the proxy marriage was unnecessary to the decision, the court noted that there were no California decisions on point but appeared to approve the opinion in *Barrons v. United States*, *supra*, 191 F.2d 92, 95-98. And in *In re Marriage of Dajani* (1988) 204 Cal.App.3d 1387, 1388, the court seemed to assume the validity of a proxy marriage when presented with the issue of whether to enforce the husband’s obligation, “per the terms of the foreign proxy marriage contract, to pay wife’s dowry.”⁴ (Fns. omitted.)

With the law so unsettled, and in view of the public policy objective to promote and protect the marriage relationship (*Argonaut Ins. Co. v. Industrial Acc. Com.* (1962)

⁴ The prenuptial agreement was found “void as against public policy” as “one designed to facilitate divorce.” (*In re Marriage of Dajani*, *supra*, 204 Cal.App.3d 1387, 1389, citations omitted.)

204 Cal.App.2d 805, 809-810), defendant cannot be charged with knowledge that a consensual marriage ceremony by telephone without the physical presence of Linsley was invalid. We also know that the law imposes on others certain obligations in respect to the issuance and filing of a marriage license. The law requires the county clerk to issue the marriage license in proper form, and the “inaccuracy of the license . . . constitute[s] a noncompliance by the clerk.” (*Id.* at p. 809.) The procedures for completion of the certificate of registry of marriage are designated in section 359: Applicants for a marriage license shall obtain from the county clerk issuing the license, a certificate of registry of marriage; the certificate of registry shall be filled out by the applicants, in the presence of the county clerk issuing the marriage license, and shall be presented to the person solemnizing the marriage; the person solemnizing the marriage shall complete the certificate of registry and shall cause to be entered on the certificate of registry the signature and address of one witness to the marriage ceremony; and, the certificate of registry shall be returned by the person solemnizing the marriage to the county recorder of the county in which the license was issued within 10 days after the ceremony.

Also, pursuant to section 421, the “person solemnizing the marriage” is the one who must “require the presentation of the marriage license” and “must be satisfied as to the correctness of the statement of facts before solemnizing the marriage.”⁵ Upon performance of the marriage ceremony, the confidential marriage license filled out by the parties must also be “authenticated” and returned to the office of the county clerk by the person solemnizing the marriage. (§ 506.)⁶ “Section 423 reiterates the requirement that

⁵ Section 421 reads in full: “Before solemnizing a marriage, the person solemnizing the marriage shall require the presentation of the marriage license. If the person solemnizing the marriage has reason to doubt the correctness of the statement of facts in the marriage license, the person must be satisfied as to the correctness of the statement of facts before solemnizing the marriage. For this purpose, the person may administer oaths and examine the parties and witnesses in the same manner as the county clerk does before issuing the license.”

⁶ Section 506 provides: “(a) The confidential marriage license shall be presented to the person solemnizing the marriage. [¶] (b) Upon performance of the ceremony, the confidential marriage certificate shall be filled out by the parties to the marriage and authenticated by the person solemnizing the marriage. [¶] (c) The certificate shall be returned by the person solemnizing the

the person solemnizing the marriage return the marriage license, along with the certificate of registry, to the county recorder.” (*Estate of DePasse, supra*, 97 Cal.App.4th 92, 100.) A person authorized to solemnize any marriage, who solemnizes a marriage without the necessary authorization or without first being presented with the marriage license, or who willfully makes a false return of any marriage or pretended marriage to the recorder or clerk “is guilty of a misdemeanor.” (Pen. Code, § 360.)⁷ Therefore, not only did existing law fail to inform defendant of the invalidity of a ceremony by telephone, but definitively placed the responsibility upon designated officials, not her, to question and accomplish a proper solemnization and filing of the marriage license.

Nor did defendant receive an authoritative admonition that the marriage license was false. The clerk’s warning to defendant that the ceremony could not be performed “over the telephone” and that “all the parties to the marriage had to be present at the same place and time,” did not furnish her with the equivalent of actual or legal knowledge of a violation of the solemnization requirements. The clerk performs “purely ministerial” functions in strict conformity with statutes, rules, or orders of the court, and was not authorized to decide questions of law or dispense reliable legal advice. (See *People v. Funches* (1998) 67 Cal.App.4th 240, 243-244.) Moreover, the clerk’s caveat may have suggested that a telephone ceremony was improper, but did not inform defendant that if she proceeded in the absence of Linsley as she had proposed, the marriage would be invalid and the license or marriage certificate false. Further, the clerk issued the license to defendant, and the person who solemnized the marriage ceremony did not mention any flaw in the proceedings. We find that the clerk’s advice to defendant does not constitute

marriage to the office of the county clerk in the county in which the license was issued within 10 days after the ceremony.”

⁷ Penal Code, section 360 specifies: “Every person authorized to solemnize any marriage, who solemnizes a marriage without first being presented with the marriage license, as required by Section 421 of the Family Code; or who solemnizes a marriage pursuant to Part 4 (commencing with Section 500) of Division 3 of the Family Code without the authorization required by that part; or who willfully makes a false return of any marriage or pretended marriage to the recorder or clerk and every person who willfully makes a false record of any marriage return, is guilty of a misdemeanor.”

evidence of her actual knowledge of a false or forged instrument as required by Penal Code section 115.

Defendant also acted as if she believed the license was valid. She made two attempts to complete a valid ceremony, the first of which included the personal appearance of Linsley. With the realization that no license accompanied the first ceremony, defendant undertook a second solemnization procedure while Linsley was incarcerated. She disclosed to both the clerk and the person who solemnized the marriage that Linsley would not be physically present, and was given a confidential license. She made no effort to conceal the nature of the proceedings. After the second ceremony, she submitted the license and told friends that she was married to Linsley.

Finally, defendant did not make a misrepresentation on any documents submitted to the court. Defendant was not required by law to refer on either the marriage license or the certificate of registry to the physical presence of the parties married at the ceremony. (§ 351, Health & Saf. Code, § 103175.)⁸ Thus, nothing in the documents submitted by defendant to the recorder's office falsely attested that Linsley was physically present for the marriage ceremony. And as we have mentioned, the law required the person who solemnized the marriage and the clerk, not defendant, to determine the correctness of the statement of facts on the documents and the validity of the marriage. (§§ 350, 351, 352, 354, 359, 422, 423; *Estate of DePasse, supra*, 97 Cal.App.4th 92, 100; *Argonaut Ins. Co.*

⁸ According to Health and Safety Code section 103175: "The certificate of registry of marriage shall contain as nearly as can be ascertained all of the following and other items as the State Registrar may designate: The first section shall include the personal data of parties married, including the date of birth, full name, birthplace, residence, names and birthplaces of the parents, maiden name of the mothers, the number of previous marriages, marital status, and the maiden name of the female if previously married; the second section shall include the signatures of parties married, license to marry, county and date of issue of license, and the marriage license number; and the third section shall include the certification of the person performing the ceremony, that shall show his or her official position including the denomination if he or she is a priest, minister or clergyperson, and the signature and address of one or more witnesses to the marriage ceremony. The person performing the marriage ceremony shall also type or print his or her name and address on the certificate. The certificate shall not contain any reference to the race or color of parties married."

Family Code section 351 merely states: "The marriage license shall show all of the following: [¶] (a) The identity of the parties to the marriage. [¶] (b) The parties' real and full names, and places of residence. [¶] (c) The parties' ages."

v. Industrial Acc. Com., supra, 204 Cal.App.2d 805, 809.) The evidence before us presents a dispute over the legal effect of the solemnization procedure and the ultimate validity of the ceremony, but does not prove beyond a reasonable doubt a knowingly false statement by defendant, or even a knowing violation by her of the law governing valid marriage licenses. Without any solid evidence of the essential element of knowing presentation of a false document, the conviction of a violation of Penal Code section 115 cannot be sustained.

Accordingly, the judgment is reversed.⁹

Swager, J.

We concur:

Marchiano, P. J.

Stein, J.

⁹ We deny as irrelevant and unnecessary defendant's request to take judicial notice of the proxy wedding of a Russian cosmonaut.